

1999

State of Utah v. James Beason : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,
v.
JAMES BEASON,
Defendant/Appellant.

: APPELLANT'S REPLY BRIEF
:
: Case No. 990371-CA
: Priority No. 2

Appeal from the Judgment and Conviction for
Aggravated Sexual Abuse of a Child, Two
First Degree Felonies, in the Seventh Judicial
District Court, Carbon County, State of Utah,
the Honorable Lyle R. Anderson, Presiding.

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Argument

Sending the “position of special trust” element to the jury constituted plain error and the record does not support the conclusion that Beason’s trial counsel “invited” the error.

The state argues that this Court should not reach the merits of the statutory construction issue regarding the meaning of the “position of special trust” element found in Utah Code. Ann. § 76-5-404.1(3)(h) (1995). The state contends that Beason has affirmatively waived this issue because (1) prior to trial Beason represented, through his first trial counsel, that he would not dispute he occupied a position of special trust, and (2) Beason waited until the state abandoned all other potentially applicable claims of aggravation before making his post-trial challenge. (State’s Brief at 11).

The state’s first argument basically asserts that Beason waived the position of special trust issue since his original trial counsel suggested, contemporaneous with the preliminary hearing, that position of special trust would not be disputed. However, the position taken by a defendant at a preliminary hearing for the limited purpose of a probable cause finding is not binding thereafter. Parties often stipulate to certain matters at a preliminary hearing for a variety of different reasons. The significant procedural fact in this case is that at no time during any phase of the trial did Beason stipulate that he occupied a position of special trust which would have taken that particular aggravating factor away from the jury’s consideration. Instead, position of

special trust was the very issue litigated by the parties during the sentencing phase and then submitted to the jury.

In order to demonstrate plain error, Beason must establish three elements: (1) an error occurred, (2) the error was obvious, and (3) the error was harmful. State v. Menzies, 889 P.2d 393, 403 (Utah 1994). The Utah Supreme Court has described the rationale for the plain error rule as follows:

[T]he doctrines of waiver and plain error serve to allocate the burden of noticing and correcting errors occurring at the trial court level. Generally speaking, the party harmed by an error has the burden of making a timely objection because that party has the greatest incentive to correct the error. Opposing parties and courts are not required to constantly survey or second-guess the nonobjecting party's best interests or trial strategy. On the other hand, where errors are particularly obvious or egregious and would serve no conceivable strategic purpose, courts and opposing parties may not simply turn a blind eye to a manifest procedural or substantial injustice.

State v. Labrum, 925 P.2d 937, 939 (Utah 1996). As the state correctly points out, plain error doctrine does not apply if trial counsel leads the trial court into committing trial error:

If trial counsel were permitted to forego objecting to evidence as part of a trial strategy that counsel thinks will enhance the defendant's chances of acquittal and then, if that strategy fails, were permitted to claim on appeal that the Court should reverse because it was plain error for the court to admit the evidence, we would be sanctioning a procedure that fosters invited error. Defendants are thus not entitled to both the benefit of not objecting at trial and the benefit of objecting on appeal.

State v. Bullock, 791 P.2d 155, 158-59 (Utah 1989), cert. denied, 497 U.S. 1024 (1990).

By focusing as it does on the strategic decisions of trial counsel, the invited error standard clearly aims at the deliberate decisions made by counsel. To that end, the state contends that it was Beason's lawyer who induced the state to withdraw its other claims of aggravation, leaving only the faulty aggravating factor at issue. (State's Brief at 13). To support this contention, the state points to the trial court's findings and conclusions on the motion to arrest judgment: "During the trial while both counsel and the judge were meeting in chambers after the verdict in the first phase of the trial, the State was persuaded to eliminate its other claims of aggravation and rely just on this position of special trust." (1 R. at 148-49; 2 R. at 273-74).

Contrary to the state's position, the record does not reflect that it was Beason's trial counsel, rather than the trial judge or someone else, who did the persuading. The state's inference that it was Beason's trial counsel who persuaded the state to abandon its other claims of aggravation is not supported by the record. Moreover, there is simply no evidence that counsel's failure to object to the position of special trust element was a conscious strategic decision. In contrast, the opposite conclusion was clearly required in State v. Winward, 941 P.2d 627, 635 (Utah Ct. App. 1997), where the appellant "concede[d] on appeal that his attorney made a tactical choice not to object during the prosecutor's closing . . ." Therefore, because trial counsel consciously avoided making a timely objection to the prosecutors improper closing, the Winward court declined to review the alleged error under the plain error doctrine. Id.

Failing to object to the position of special trust factor was mere inadvertence on the part of Beason's trial counsel and not some elaborate plan to lead the trial court into committing error. The invited error exception to the plain error doctrine has no application to this case. In addition, Beason's original trial counsel's stipulation did not operate as a waiver to any subsequent claims involving the position of special trust factor since counsel can stipulate to any number of matters at a preliminary hearing without being bound to those positions once the case goes to trial.

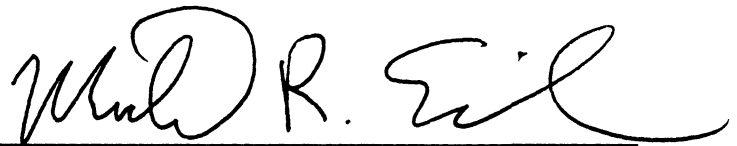
The next issue is whether the error satisfies the three elements of the plain error test. First, in his opening brief Beason has provided the legal analysis demonstrating that an error occurred and that based on the language of Utah Code Ann. § 76-5-404.1(3)(h) the position of special trust factor should not have been submitted to the jury during the second phase of deliberations. That analysis will not be repeated here since the statutory construction issue has already been thoroughly analyzed. Second, it is clear that the error was obvious. Beason did not occupy a position of special trust, by virtue of his status as grandfather, in light of the language and structure of the statute and the conspicuous omission of grandparents from the list of culpable persons. Finally, it is self-evident that the error was harmful since the jury's conclusion that Beason occupied a position of special trust resulted in improperly enhancing his convictions from second degree felonies to first degree felonies. Because Beason was convicted of aggravated sexual abuse of a child he is now serving two minimum mandatory sentences. Minimum

mandatory sentences could not have been imposed upon conviction of second degree felonies.

Conclusion

Based upon the foregoing facts and argument, Beason requests this Court to reverse the denial of his motion to arrest judgment, vacate the judgments, and remand with instructions to reduce the first degree felony convictions to second degree felony convictions.

DATED this 7 day of October, 1999.



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CERTIFICATE OF SERVICE

I certify that two (2) true and correct copies of Appellant's Reply Brief were hand-delivered or mailed on the 7 day of October, 1999, to:

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